



In re Estate of the Late Paul Kipngeno Chumo (Deceased) (Succession Cause 133 of 2007) [2023] KEHC 25836 (KLR) (23 November 2023) (Judgment)

Neutral citation: [2023] KEHC 25836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 133 OF 2007
JK SERGON, J
NOVEMBER 23, 2023**

IN THE MATTER OF THE ESTATE OF THE LATE PAUL KIPNGENO CHUMO (DECEASED)

BETWEEN

ZACHARIA KIPKORIR NGENO PETITIONER

AND

CHRISTINE CHEMUTAI NGENO 1ST OBJECTOR

HELEN CHELANGAT RUTO 2ND OBJECTOR

JUDGMENT

1. The applicant filed a summons for revocation or annulment of grant dated 27th June, 2023 seeking the following orders;
 - (i) Spent.
 - (ii) That pending the hearing and determination of this summons for revocation of grant a prohibitory order do issue to prohibit any dealings involving LR No. Kericho/Kapkatet/950, LR No. Kericho/Kibwastuiyo/572, LR No. Kericho/kipkelion Barsiele Block 1 (kaula)/65, LR No. Kericho/Kipkelion/Barsiele Block 1 (kaula)/65 & LR No. Kericho/Kipkelion/Barsiele Block 1 (kaula)/239, and all titles resulting from sub - division thereof being;
 - (i) LR No. Kericho/Kapkatet/950 - (resultant titles; LR No. Kericho/Kapkatet/3758 - 3767)
 - (ii) LR No. Kericho/Kipkelion Barsiele Block 1 (kaula)/65 - (resultant titles; LR No. Kericho/Kipkelion Barsiele Block 1 (Kaula)/352-359).
 - (iii) That pending that hearing and determination of summons for revocation of grant, there be a stay of further distribution of the estate of the deceased and more specifically LR No. Kericho/



Kapkatet/950, LR No. Kericho/Kibwastuiyo/572, LR No. Kericho/Kipkelion Barsiele Block 1 (Kaula)/65, LR No. Kericho/Kipkelion/barsiele Block 1 (Kaula)/65 & LR No. Kericho/kipkelion/barsiele Block 1 (kaula)/239, and all titles resulting from sub - division thereof being;-

- (i) LR No. Kericho/Kapkatet/950 - (resultant Titles; LR No. Kericho/Kapkatet/3758 - 3767)
 - (ii). LR No. Kericho/Kipkelion Barsiele Block 1 (kaula)/65 - (resultant Titles; LR No. Kericho/Kipkelion Barsiele Block 1 (Kaula)/352-359).
 - (iv) That the grant of letters of administration made to Christine Chemutai Ngeno & Zacharia Kipkorir Ngeno on the 22nd July, 2020 and confirmed on 16th March, 2022 be revoked on the grounds listed in paragraph iv (a) - (f).
 - (v) That the Honourable Court be pleased to order for revocation of titles in respect to LR. No. Kericho/Kipkelion Barsiele Block 1 (Kaula) 352-359 being titles resulting from the subdivision of LR No. Kericho/Kipkelion/Barsiele Block 1 (Kaula)/65 and LR No. Kericho/kapkatet/3758-3767 being titles resulting from the subdivision of LR No. Kericho/Kapkatet/950 and restore the register to its original proprietor to pave the way for proper distribution.
2. The application is supported by grounds on the face of it and the affidavit in support of summons for revocation of grant sworn by Christine Chemutai Ngeno with the consent of her co-objector Helen Chelangat Ruto.
 3. The Applicant avers that she is the daughter-in-law of the deceased herein and the petitioner her brother-in- law and that when the succession proceedings commenced in 2007 the petitioner and her late husband, Samwel Kipngeno Ngeno were the administrators of the estate. Upon his death he was substituted by their son Peter Kibet Kimetto and further that sometime in 2020 the petitioner/respondent out of malice and ill-will caused the removal for her son as the administrator and began to ask her to sign documents she could not understand based on false allegations.
 4. The Applicant avers she was aware that sometime on 16th March, 2022 the temporary grant that had been issued to her and the petitioner/respondent was confirmed.
 5. The Applicant avers that after a while she was surprised when the petitioner/respondent informed her that she ought to move out of a section comprised in the Kericho/Kipkelion Barsiele Block 1 (Kaula)/65 that she has planted and ploughed for the last thirty years and informed her that pursuant to the subdivision that was conducted in February 2023 and the said piece no longer belonged to her.
 6. The Applicant avers that in view of the suspicious behaviour together with her co-objector proceeded to the Land's Registry to make enquiries of the land parcels under succession and were perplexed when they were informed that the parcel had been subdivided severally as a consequent of the confirmed grant issued on 16th March, 2022 and further that the petitioner/respondent had transferred the parcels to strangers and persons not named in the confirmed certificate of grant, she reported the matter at Kipkelion Police Station vide OB. No. 15/09/06/2023 and that investigations are ongoing as to how the strangers acquired title deeds without proper procedure.
 7. The Applicant avers that the petitioner/respondent upon removing her son as one of the administrators took advantage of her old age and illiteracy and deceived her to proceed with a defective process and further that despite them having agreed on a mode of distribution, that the estate would be divided equally amongst the two houses, however, what was captured on paper was seemingly different.



8. The Applicant avers that taking into account all the fraudulent activities of the Respondent, the confirmed grant issued on 16th March, 2022 had become obsolete, inoperative and incapable of being implemented by the petitioner/respondent and ought to be revoked to pave way for proper distribution of the estate and further that some of the titles in respect of the estate had been closed on account of sub division, the resultant titles ought to be canceled and the titles do revert to the name of the deceased to pave way for fresh distribution.
9. Zachariah Kipkorir Ngeno the respondent/petitioner filed a replying affidavit in response to the application dated 27th June, 2023 in which he responded to all the averments in the 1st objector/applicant's supporting affidavit, he denied the contents therein in toto and more particularly the fact that the succession proceedings were defective and that the applicant was deceived to sign, he maintained that every step taken in the succession proceedings was above board and all the requisite documents and steps were taken in the knowledge of the applicant.
10. The respondent/petitioner maintained that contrary to the applicant's assertion, she has a home and lives in her parcels of land known as Kericho/Kipkelion Barsiele Block 1 (Kaula)/356, Kericho/kipkelion Barsiele Block 1 (Kaula)/357, Kericho/Kipkelion Barsiele Block 1 (Kaula)/358 And Kericho/kipkelion Barsiele Block 1 (Kaula)/359 the total acreage measuring 4.5 acres instead of 3.8 acres as per the grant.
11. Hellen Chelangat Ruto the 2nd objector/applicant filed an affidavit opposing the application dated 27th June, 2023 and contending the inclusion of her name as an objector in the application for summons of revocation of grant as she was not opposing the confirmation of grant as she got her rightful share with which she was content and further that through a consent to confirmation of grant dated 22nd July, 2020 had forfeited her share in the estate of the deceased.
12. Christine Chemutai Ngeno the 1st objector/applicant filed a further supporting affidavit support of her Application dated 27th June, 2023 and in response to the replying affidavit by the petitioner/respondent, in which she reiterated the averments in the affidavit in support of the summons for revocation of grant.
13. The applicant contended that persons not provided for in the certificate of confirmation of grant issued on 16th March, 2022, were allocated shares/parcels of land, which was irregular and/or unlawful.
14. The applicant contended that whereas in the confirmed certificate of grant the petitioner/respondent was entitled to a cumulative acreage of 2.65 acres, he illegally allocated himself a cumulative acreage of 5.349 contrary to the certificate of confirmation.
15. The applicant contended that Phillip Ngeno Kiplangat was supposed to get 0.45 acres in LR No. Kericho/Kipkelion/Barsiele Block 1 (kaula) 65 was allocated with 2.10 Ha upon subdivision the resultant title being in LR No. Kericho/Kipkelion/Barsiele Block 1 (Kaula)/352 and further that Ngeno Kibet Anthony was supposed to get 0.73 acres in LR No. Kericho/Kapkatet/950 was allocated with 0.526 Ha upon subdivision the resultant title being LR No. Kericho/Kapkatet/3761 contrary to the certificate of confirmation of grant.
16. The applicant in response to paragraph 18 of the replying affidavit reiterated that she did not own the parcels indicated therein, she maintained that LR No. Kericho/Kipkelion/Barsiele Block 1 (Kaula)/354 & 357 was illegally allocated to Stanley Kiplangat Kimetto while LR No. Kericho/Kipkelion/Barsiele Block 1 (Kaula)/355 was allocated to Robert Kibet Langat contrary to the confirmed grant.



17. The applicant maintained that the petitioner/respondent herein had caused illegal and /or irregular subdivisions, which illegality cannot be sanctioned by the court. She therefore argued that on account of the fraudulent activities perpetrated by the petitioner/respondent it was clear that the confirmed grant issued on 16th March, 2022 was absolutely obsolete, in-operative and incapable of being implemented and therefore ought to be revoked to pave way for proper distribution.
18. The applicant reiterated that some of the beneficiaries of the estate were homeless and destitute, as the shares to the estate were illegally taken and given to strangers.
19. The Applicant filed the Notice of Motion dated 6th September, 2023 for contempt of court seeking the following orders;
 - (i) Spent
 - (ii) That this honourable court be pleased to issue summons to attend court upon the contemnors on such a day as this application shall come for inter partes hearing to explain to court why contempt proceedings should not issue.
 - (iii) That the contemnors herein be committed to civil jail for contempt of court for disobeying the orders of this honourable court issued by Justice Dr. J.K. Sergon, J. on the 12th July, 2023
 - (iv) That the contemnors be ordered or be kept in prison for a term not exceeding six (6) months or such terms as this Honourable Court may deem fit to order.
 - (v) That the costs of this application be borne by the contemnors
20. The application that the contemnors be committed to civil jail for disobedience of court orders is supported by the affidavit sworn by Christine Chemutai Ngeno in which she avers that by a decree and/ or order of this court issued on 12th July, 2023, the court directed and restrained the contemnors either by themselves, their servants, agents and assignees or representatives and nominees from interfering with the estate of the deceased and further distributing the estate of the deceased pending hearing and determination of the application dated 27th June, 2023.
21. The Applicant avers that the contemnors blatantly disobeyed the court order and have gone ahead to enter onto, further cultivate the parcel of land and erected buildings.
22. The Applicant avers that some of the contemnors are not beneficiaries of the estate rather they had been allocated a portion of land by the 1st contemnor in blatant disregard of the certificate of confirmation of grant dated 16th March, 2022 and despite them owning the parcels fraudulently, continued to disobey the orders of this court.
23. Zacharia Kipkorir Ngeno the petitioner/respondent herein filed a replying affidavit in response to the application dated 6th September, 2023 and maintained that no court orders had been violated so as to necessitate the instant application and contended that he was not served with court orders issued by this court on 12th July, 2023 as alleged by the process server and was therefore adamant that the said process server Vincent Kiprotich Chepkwony ought to be summoned by this court for cross examination on the contents of his affidavit of service dated 24th July, 2023.
24. The petitioner/respondent outlined the chronology of the dealings in the estate of the deceased herein, the same is captured in paragraph 15 - 33 of his replying affidavit. The petitioner/respondent reiterated that the applicant took part in the entire court proceedings, land control board, executed mutation forms, attended survey works and has title deeds as a result of the entire smooth process which took 16



years to complete and that all beneficiaries of the estate were in occupation and in use of their respective portions of lands.

25. The petitioner/respondent reiterated that the whole family had settled down with each beneficiary obtaining title deeds as per the certificate of confirmed grant, the distribution of the estate determined in March, 2023 of thereabouts and according to the petitioner/respondent the prohibition orders were issued long after the horses had bolted out of the stables, bolting an empty stable is an exercise in futility.
26. Philip Kiplangat Ngeno one of the contemnors stated that the court order dated 12th July, 2023 was never served upon him and in any event he is not a party to HC Succession Cause No. 133 of 2007, hence could not be faulted for violating orders in a suit he was not party to.
27. He reiterated that it was trite law that a person who has not been made a party to a suit can be condemned in proceedings which he is not aware of and rather he had obtained a title deed after following due process of the law which process was sanctioned by the honourable court.
28. He contended that upon reading the contents of the supporting affidavit dated 6th September, 2023, there were no specific allegations levied against him.
29. He contended that the contempt proceedings herein had no legal basis nor established any triable issue and therefore ought to be dismissed.
30. Stanley Kiplangat Kimetto a son to the 1st objector/applicant one of the contemnors herein stated that he had footed all bills including the fees for succession, construction a business canteen and a house in the year 2015 for the applicant, in return, she personally gave the instructions to the surveyor to allocate 2 acres of land to him. He stated that he paid for the surveyors fees in all her current parcels of land LR No. Kericho/kapkatet/3760, LR No. Kericho/Kapkatet/3762 and LR No. Kericho/Kipkelion/Barsiele Block 1 (Kaula) 356 & 357.
31. Hellen Chelangat Ruto the 2nd objector/applicant filed a replying affidavit in response to the application for contempt and contended that she was a stranger to the contempt proceedings and further that she did not give Mr. Mwita, Learned Counsel for the 1st objector/applicant verbal or written instructions to institute the instant application against the four contemnors.
32. She maintained that the 1st objector/applicant had appended her signature to the mode of distribution of the estate herein and actively took part in the court proceedings and in the land control board proceedings.
33. She reiterated that the 1st applicant/objector had benefited and obtained several titles pursuant to the instant succession proceedings.
34. She maintained that the grant of letters of administration was confirmed 16th March, 2022 and that soon thereafter they decided to process the title deeds in 2022 and therefore the original titles do not exist anymore and therefore the purported orders were issued long after the mutation had been done and new titles issued as per the confirmed grant.
35. The Applicant Christine Chemutai Ngeno filed a further replying affidavit in support of the application for contempt and maintained the she had instituted the application for contempt with the consent of the Hellen Chelangat Ruto and further that Philip Kiplangat Ngeno was cited as contemnor of court orders as he was staying on the disputed land and in any event was provided for in the certificate of confirmed grant and therefore a party to the suit. The further replying affidavit was supported by the Affidavit of Vincent Kiprotich Chepkwony the process server, he maintained that he had served Zachariah Kipkorir Ngeno with the court orders dated 12th July, 2023. The further replying affidavit was supported by the affidavit of Mr. Mwita Learned Counsel for the 1st objector/applicant who



- contended that Hellen Chelangat Ruto had issued instructions to commence suit for both revocation of grant and contempt.
36. The court directed that both applications be canvassed by oral submissions in court.
 37. Mr. Mwita Learned Counsel for the 1st objector/applicant submitted that in the application dated 27th June, 2023 he was seeking for revocation of the grant issued on 16th March, 2022, the grant had become obsolete and inoperative because the petitioner/respondent had distributed the estate contrary to the said grant. He contended that on 12th July, 2023 court orders were issued prohibiting dealings with the properties listed, however, the petitioner/respondent proceeded to deal with the properties despite being served with the said court orders on 14th July, 2023 and therefore the contemnors wilfully defied court orders necessitating the application for contempt dated 6th September, 2023.
 38. The Learned Counsel for the objector/applicant maintained that all parties were duty bound to comply with court orders even if it was alleged that the court orders were ambiguous, he relied on the case of Kenya Tea Growers Association v Atwoli & 5 Others whereby the court stated that all court orders must be disobeyed whether the orders are vague or not. He further submitted that he was doubtful as to whether the objector/applicant had participated in proceedings before the Land Control Board.
 39. Mr. J.K Kirui, the Learned Counsel for the petitioner/respondent submitted that the entire estate of the deceased had been distributed and all beneficiaries were in agreement save for the 1st objector/applicant herein. He contended that the orders alleged to have been breached were issued on 12th July, 2023, the said orders were superseded by events and that at time the orders were issued the grant and been fully implemented and titles issued to the beneficiaries. He therefore contended that the application dated 27th June, 2023 and 6th September, 2023 were made in bad faith.
 40. I have considered the summons for revocation of grant and application for contempt as well as the replying affidavits filed by the parties in the various applications. The issues for this courts determination are whether the confirmed certificate of grant issued on 16th March, 2022 ought to be revoked and whether the application for contempt of court order issued on 12th July, 2023 is merited.
 41. On the issue of the revocation of grant, the main grounds advanced in support of revocation of the confirmed certificate of grant issued on 16th March, 2022 were that the objector/applicant was hoodwinked, she alleges that the petitioner/respondent took advantage of her old age and illiteracy and deceived her to proceed with a defective process and further that on account of fraudulent activities by the petitioner/respondent the grant had become obsolete, inoperative and incapable of being implemented by the petitioner/respondent and therefore ought to be revoked to pave way for proper distribution of the estate. On one part the objector/applicant alleges to have been led to participate in defective proceedings and on the other part the petitioner/respondent maintains that everything was above board, the applicant took part in the entire court proceedings, proceedings before the land control board, executed mutation forms, attended survey works and has title deeds as a result of the entire smooth process which took 16 years to complete and that all beneficiaries of the estate were in occupation and in use of their respective portions. I have studied the contents of the file and I find that the objector applicant was granted letters of administration intestate which were consequently confirmed by this court on 16th March, 2022, which fact the objector/applicant herein is privy to and further that upon confirmation they proceeded with subdivision in order to distribute the estate of the deceased, on file annexed to the replying affidavit of the petitioner/respondent dated 3rd October, 2023 marked as “Z.N.K 1” is a letter of consent from Bureti Land Control Board addressed to Christine Chemutai Ngeno and Zachariah Kipkorir Ngeno for the subdivision of LR. No. Kericho/Kapkartet/950 which was subdivided into the following resultant titles; LR



No. Kericho/kapkatet/3758 - 3767 and the applicant herein is the registered proprietor of LR No. Kericho/Kapkatet/3760 & 3762 according to the certificates of title issued thereafter. Therefore the allegations that she did not participate in the succession proceedings and/or was not privy to the subdivision process and that she had been left destitute and homeless following the confirmation of certificate of grant are unfounded. I also find that the allegations that the petitioner/respondent had transferred the parcels to strangers and persons not named in the confirmed certificate of grant, is not an issue which is within the jurisdiction of the probate court moreso upon confirmation of certificate of grant. *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR the court observed as follows;

“Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned.”

42. On the issue as to whether the application dated 6th September, 2023 for contempt of court orders is merited, I find that the answer is in the negative, the certificate of confirmation of grant was issued on 16th March, 2022 and the administrators begun the subdivision process, which process terminated with each beneficiary obtaining title deeds as per the certificate of confirmed grant, the distribution of the estate determined in March, 2023 or thereabouts and according to the petitioner/respondent the prohibition orders dated 12th July, 2023 were issued long after the distribution of the estate was complete. I have also taken cognizance of a copy of family minutes dated 15th August, 2023 annexed to the petitioner/respondent’s replying affidavit dated 3rd October, 2023 marked as “Z.K.N 7” ratifying the distribution of the deceased’s estate in accordance to the confirmed grant, the beneficiaries to the estate have appended the signatures. In the circumstances it is clear that all beneficiaries of the estate are contented with the outcome of the succession proceedings and the distribution of the estate of the deceased save for the objector/applicant herein.

43. Accordingly, I dismiss both the summons for revocation of grant dated 26th June, 2023 and the application for contempt dated 6th September, 2023. Each party to bear its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY OF NOVEMBER, 2023.

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J.K. SERGON

JUDGE

In the presence of:

Rutoh - Court Assistant

Kitur holding brief for Kirui for the Petitioner

Mr. Mwita for the Objector

